Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 19-105
for Fiscal Year 2019	)	

Directed to: Office of the Secretary
Attention: The Commission

COMMENTS OF PMCM TV, LLC

PMCM TV, LLC, which operates WJLP TV 3 licensed to Middletown NJ ("WJLP") hereby respectfully submits comments with regard to the *Notice of Proposed Rulemaking, Assessment and Collection of Regulatory Fees for Fiscal Year 2019,* FCC 19-37, released May 8, 2019 (the "Notice").

Before getting into our response, the fact that the Notice just recently appeared in the Federal Register on June 5, 2019, means that this Notice failed to comply with the Administrative Procedure Act ("APA"). The APA requires agencies to give parties at least thirty days to respond (absent emergency or other conditions). *See*, 5 U.S.C. §553. The Federal Register publication of the Notice did not appear until June 5, 2019, a mere two days before the stated comment due date. 84 Fed. Reg. 26234, June 5, 2019. While the APA does provide for exceptions when an agency had made a finding that the required notice period is impracticable or there are other extenuating factors, but the Commission has made no such finding here, nor, in fact, could it reasonably do so. The failure to send a notice of proposed rulemaking for publication in the Federal Register in a timely fashion does not, by itself, create such an emergency or extenuating circumstance which would have altered the required thirty-day period set forth under the APA. We raise that concern because the issues discussed in the Notice are varied and extremely encompassing, some of which we will try to expound upon in this response. Due to the limited time in meeting the June 7, response deadline, a more thorough analysis could not be completed, (i.e. rather than the normal thirty days window to respond, technically, we are responding in a two-day window).

In reviewing the prior year public record for the Fiscal Year 2018,[1] and weighing its prior determination against the requirements of RAY BAUM'S Act[2] the Commission tentatively concluded once again that it would switch from a Television market based fee assessment ("DMA Based Fee") to a fee based on the population within a specified service contour ("Population Based Fee"). The Notice proposes calculating Regulatory fees in a manner similar to that used for Radio, pursuant to which Radio stations are assessed Regulatory fees based on service contours and further delineated by Class. In striking contrast, the Notice for television stations essentially provides a singular fee assessment approach based solely on the Noise Limited Contour of a facility (the "NLSC"). The NLSC implies that it is the contour within which a perfect picture would appear at each television receiver. Unfortunately, this approach does not consider the effects on a signal that may result from (i) the distance it may travel; (ii) the effects of terrain; (iii) building blockages which often occur in major city settings; and (iv) interference levels from co-channel and adjacent channel signals. It is important to note the difficulty VHF signals have in overcoming background interference "noise" even in situations where the signal is robust. In this context, the "noise" we are referring to is not the interference from other stations which limits a station's reach (*i.e.*, the NLSC), but rather, the general

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, 33 FCC Rcd 8497 (2018).
[2] Consolidated Appropriations Act, 2018, Division P — RAY BAUM'S Act of 2018, Title I, FCC Reauthorization, 47 U.S.C. §§ 159, 159A.

environmental noise especially prevalent in large cities like New York City and other major metropolitan areas.

Additionally, the FCC's TV Regulatory fee structure should consider the fact that technically, the prediction for the NLSC is only the area within which broadcasters' TV signals can reach 50% of the audience 90% of the time, and if that is the case, then how can the Regulatory fees be based upon 100% of the population of the NLSC? One would think that at a minimum, based upon the foregoing metrics, the proposed Regulatory fee would reflect 45% of the population.

Furthermore, pursuant to RAY BAUM'S Act, the Commission is now required to "take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. §159(d). It is unclear how the benefits provided to a television station by the Commission's regulation can be said to vary in any meaningful way based upon the number of people who happen to live in the area where the station is located. While a station's income and ability to pay vary with market size, the benefit of an authorization to operate is the same in every market. More expenditure of Full Time Equivalents ("FTE's") may be required for Commission regulation in markets with many stations packed closely together, but that situation is more a factor based on market considerations than a single station's theoretical population served.

Also of note, the table of Regulatory fees does not make any distinction between UHF and VHF stations. Prior to FY 2014, the Commission assessed VHF TV stations a higher Regulatory fee than UHF stations. Effective in 2014, the Commission determined that after the digital transition, VHF stations had actually become "less desirable" than UHF stations in terms of prestige and larger audiences (especially due to the signal limitations of VHF stations) and thus there was therefore no longer any basis for charging VHF stations a higher Regulatory fee[3]. Based upon the Notice, it does not seem to have occurred to the Commission that the same rationale that prior to 2014 justified a lower fee for UHF stations prior to the digital transition now likewise requires a lower fee for VHF stations. PMCM has previously raised this issue, and the Commission indicated that it would consider it for Fiscal Year 2017 (*see, Assessment and Collection of Regulatory Fees for Fiscal Year2016*, 31 FCC Rcd 10339 at n. 124), but it did not do so. *See, Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, 32 FCC Rcd 4527 (2017).

UHF stations have significantly higher authorized power levels, suffer no disadvantage on the receive side, retain coveted dial positions by virtue of the Commission's adoption of the ATSC's PSIP rules, and have the capability of offering mobile services (which low band VHF stations do not). All of these factors undeniably result in low band VHF stations being less desirable than UHF stations. This basic fact was confirmed by the respective values assigned by the Commission to VHF stations vis-a-vis UHF stations in the Incentive Auction process. Not only were the UHF's deemed more valuable there by a wide margin, but also it is very likely that UHF stations will require far more FTEs by the Commission in connection with the complex post-auction repacking process. In stark contrast, most VHF stations, on the other hand, will likely stay put and require little to no added FTE oversight. To be consistent with the Commission's policy of assessing lower fees to TV categories that are less valuable than others, the Commission should assess VHF, and especially low band VHF, stations, a significantly lower Regulatory fee. It would fly in the face of reason to assess VHF channels and UHF channels with the same purported population based Regulatory fees, despite their radically different technical characteristics and thus ability to reach that population.

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[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, 28 FCC Rec. 12351 (2013)

In contrasting the Radio Regulatory fee methodology and that of TV, the larger question is why the Radio rationale of the population-based Regulatory fees should be applied to the TV industry when the two industries utilize population coverage figures quite differently. Unlike the Radio industry where listeners are aggregated by “reach” and more often than not aggregated by in-car listening, TV viewing is largely still done in homes within defined DMA’s. Thus, TV viewing is not tied to a station’s service contours like radio. Further, one need only look at how TV stations derive revenues. Those viewing and buying patterns are almost exclusively done by where a station is located (i.e. within the DMA) and not based upon the stations’ service contours. This concept is borne out as to where a TV station’s carriage on MVPDs are mandated, namely in the DMA which can represent as much as 85% of viewing. As a practical example, WJLP, licensed to Middletown NJ and serving the NY/NJ DMA, would have a signal that could very well reach into the Philadelphia or Hartford markets, yet no advertising agency would be evaluating WJLP for a television buy in either DMA. Those advertising buys would be placed with stations located within those DMAs.

The Notice has provided calculations of TV regulatory fees using three methodologies. The first is a pure “Population” served based fee. The second is a “Nielsen DMA” based fee and the third is a “Blended” based fee employing ½ population and ½ DMA based fee structure. Under these three varying approaches, insofar as WJLP is concerned, the Regulatory Fee proposed calculations produce anywhere from a low of an 8.5% increase (DMA Fee Structure), to a median 109.5% under the Blended approach, to a high of a 211% increase under the pure Population based fee structure approach. To put this into dollars and cents, the quantification of these varying Regulatory Fee Structures, is that in 2018 WJLP paid $49,750 in Regulatory fees and under the Notice could pay as much as $154,492. That level of increase is simply unexplainable when you also consider that for this low VHF station nothing has changed and yet it will suffer a 211% fee increase! While the full effects of this method of calculation may not be felt until next year, it is still a staggering increase over only two years. Clearly, there is absolutely no possibility that a station's revenues would also increase more than 200% to enable the station to afford this level of additional fees.

Further, we feel it is important to note that the Notice makes no attempt to explain or justify the magnitude of the Regulatory Fee increase as delineated in the Notice, nor does the Notice make any attempt to explain why such an increased fee is necessary. Likewise, there is no explanation of the disparity of the Regulatory fees to be paid by the Radio industry (as noted above) and what will be absorbed by the TV industry. As noted in Inside Radio's June 4 Report[4], the biggest FMs in the largest markets would see the annual Regulatory Fee jump to $22,650 compared to $18,880 last year (a 20% increase). On the AM dial the FCC has taken a similar approach, proposing that the biggest AMs would also see their annual fee go up 20% from $15,050 to $17,950. Again, the foregoing increases amount to only 20% whereas the TV industry seems to be shouldering a larger share of the Regulatory Fee burden. This disparity, on its face, is incongruous. Ironically, set amidst this unparalleled fee increase, TV broadcasters have been experiencing a contraction of audience share and advertising revenues stemming from the unprecedented growth of digital media players (Google, Facebook, Twitter, Instagram, Netflix, Amazon Prime, Roku, HULU, etc.), along with an array of other marketing firms and their targeted marketing algorithms. This combination is producing an ever-decreasing advertising buying platform for both radio and TV broadcasters alike. WJLP recognizes that the FCC's 2019 Budget may be increasing; however, the degree to which the Regulatory fees seem to be

[4] http://www.insideradio.com/free/fcc-seeks-higher-annual-fees-from-stations-nab-demands-to/article_dff0bd00-7b9c-11e9-a845-cffc4cbddc27.html

escalating seem to be out-of-step with any possible increased expense escalation the FCC may have forthcoming. Set against an annual Consumer Price Index of around 2.1%, something seems awry for the FCC to be seeking this level of Regulatory Fee increase.

Respectfully, we feel that the Notice does not meet the most minimum of standard of disclosure which Congress has established for the Commission nor the standards to which the FCC heretofore has held itself. Until the Regulatory Fee expense escalation can be clarified, there is simply no meaningful way broadcasters can submit meaningful and cogent comments on the merits of why the Regulatory fee increase of this magnitude is necessary or justified. That said, as to the logic of the “approach” to be used, of the three methodologies being examined for TV under the Notice, we feel that the only methodology that matches revenues with expenses is the DMA approach, which matches a station’s revenue in the DMA to underlying costs structures and true viewership served. Lastly, we also feel there must be some recognition that there should be a major stratification of the Regulatory fees paid by VHF stations, low band VHF stations, and UHF stations similar to the “Class” structure afforded Radio.

Consequently, based on the foregoing, we feel that the population-based assessment for purposes of calculating regulatory fees should not be adopted at this time.

On behalf of WJLP, we appreciate the opportunity to respectfully provide our views on this extremely important matter.

Respectfully submitted,

PMCM TV, LLC

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